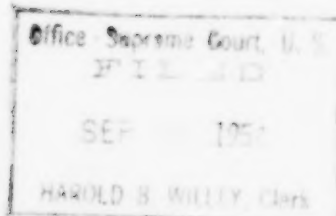


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IN THE
Supreme Court of the United States

OCTOBER TERM, 1954.

No. 7

WILBURN BOAT COMPANY, et al.,

Petitioners,

vs.

FIREMAN'S FUND INSURANCE COMPANY,

Respondent.

**REASONS FOR WITHHOLDING CONSENT TO BRIEF
AMICUS CURIAE.**

EDWARD B. HAYES,

135 South La Salle Street,
Chicago 4, Illinois,

Attorney for Respondent,

IN THE
Supreme Court of the United States

OCTOBER TERM, 1954.

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WILBURN BOAT COMPANY, et al.,
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Respondent.

**REASONS FOR WITHHOLDING CONSENT TO BRIEF
AMICUS CURIAE.**

Pursuant to Rule 42(3), Respondent now states concisely "reasons for withholding consent" to the Motion of Messrs. Stephen V. Carey, Samuel G. Bassett and John Geisness for leave to file a brief *amicus curiae* in the above-entitled cause.

1. The application does not comply with Rule 42(2) of this Court.¹

¹ "A brief of an *amicus curiae* in cases before the court on the merits may be filed only after an order of the court or when accompanied by consent of all parties to the case and presented within the time allowed for the filing of the brief of the party supported." (Emphasis supplied)

Revised Rules of the Supreme Court of the United States,

adopted April 12, 1954, effective July 1, 1954, Rule 42(2)

Admittedly it was not presented within the time allowed for the filing of the brief of the parties supported (application, P. 2). The appli-

2. The application fails to satisfy Rule 42(3) of this Court, in that it sets forth no questions of fact or law that have not been (nor any reasons for believing they will not be) adequately presented by the parties. The application states (emphasis supplied):

"Petitioner's brief no doubt covers the question, but, nevertheless, we believe that to a degree (sic) it may obscure the vital constitutional question by discussion of details relative to the Texas statute. Moreover several decisions not cited may have a controlling influence. We refer particularly to the decision of Mr. Chief Justice Hughes in Detroit Trust Company, Trustee v. Steamer Thomas Barlum, October Term 1934, 293 U. S. 21, 79 L. Ed. 176, sustaining the Preferred Ship Mortgage Act of 1920, a radical departure from pre-existing maritime law. There are several other decisions which it would be improper to discuss at length now."

Contrary to the statement so made the decision so referred to is cited, in our Brief in Reply to Petition for Certiorari, at pages 37 and 40. No "other decisions" are named, nor is their doctrine stated.

The constitutional validity of statutes is not obscured by discussion of their details, precise application on the very facts of the very statute being of the essence of any

¹ (Cont'd.)

cants attempt to excuse their delay by asserting that they are recently in receipt of an opinion of an appellate court of the State of Washington, allegedly involving a question similar to that involved here. It affirmatively appears, however, from the application (pages 1 and 2 thereof) that the trial court had first passed on the question in which the applicants assert an interest. They fail to show that they have any different interest now than they had when the Washington trial court acted or while that case was pending on appeal. There is no showing that the question which the applicants now seek to present to this Court was not available to them in ample time to present their application in compliance with this Court's rules.

helpful discussion of constitutional questions. Nor is it made to appear that the California statute with which applicants are concerned is "substantially comparable" to the Texas statutes relied on by Petitioners, nor is it.

3. The application states that respondent neither unequivocally gives nor refuses consent to the filing of a brief *amicus curiae*. Respondent was first requested to give such consent by telegram of September 14, 1954 (copied in Petition for Leave to File at pages 4 and 5, "Appendix" thereof). Respondent did refuse to give its consent on the ground that the application did not comply with this Court Rules 42(2) and 42(3).²

The applicant so interpreted respondent's action.³ Ap-

² Respondent's telegram reads:

"Chicago, Illinois, Sept. 15, 1954

"BASSETT, GEISNESS & VANCE
New World Life Building
Seattle, Washington

Reurtel of yesterday afternoon. Please refer to Rule 42 U. S. Supreme Court effective July 1st last. Petitioner's brief on the merits was filed August 25th last when the time therefor expired. Apparently the court will not receive a new-brief on that side now from a stranger to the cause. The case is set for argument in a few weeks, which may illustrate the occasion for the rule forbidding an *Amicus Curiae* brief after time has expired for the brief of the party sought to be supported thereby. In any event since my consent would be ineffective under the Supreme Court's rule I should appreciate it if you would withdraw your request for it.

EDWARD B. HAYES."

³ Applicant's reply to respondent's telegram reads:

"Seattle, Washington
September 15, 1954

"EDWARD B. HAYES
Attorney at Law
123 South LaSalle
Chicago, Illinois

Familiar with rule. We interpret your telegram fifteenth as refusing our request of fourteenth. If incorrect please advise.

BASSETT, GEISNESS & VANCE"

plicants were not advised that their earlier interpretation was incorrect. It was, and is, correct.

Applicants admit failure of "literal compliance with Rule 42 of this Court." There has been no compliance, literal or otherwise. In view of the above circumstances it would be an unwarranted hardship and not conducive to the presentation of this cause in a manner calculated to its proper consideration to confront the parties and the Court with another brief, supposedly on the merits, at this late date. The considerations appearing to underlie Rules 42(2) and 42(3) are believed to be particularly applicable.

Respectfully submitted,

FIREMAN'S FUND INSURANCE COMPANY,
Respondent

Edward B. Hayes
Its Attorney

CERTIFICATE OF SERVICE.

I DO HEREBY CERTIFY that the foregoing Reasons for Withholding Consent to Brief *Amicus Curiae* was served on attorneys for applicants, Stephen V. Carey, Samuel B. Bassett and John Geisness at their office 811 New World Life Building, Seattle 4, Washington, by depositing a copy of said Reasons in the United States Post Office at Chicago, Illinois, on the 24th day of September, 1954, with airmail postage prepaid.

EDWARD B. HAYES